

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEITH L. NASH,

Plaintiff,

v.

DOUG WADDINGTON, *et al.*,

Defendants.

Case No. C06-5127-RJB/KLS

ORDER TO SHOW CAUSE

Presently pending before the Court is Defendants' motion for summary judgment. (Dkt. # 121). Plaintiff's deadline to respond to the motion was on October 5, 2007. (Dkt. 154). Plaintiff signed his response on October 3, 2007, but it was processed by DOC staff on October 9, 2007. (Dkt. # 178). Plaintiff's response was filed in this action on October 11, 2007 with numerous attachments (about 311 pages). (*Id.*). In the copy Plaintiff served on Defendants' counsel, however, the only attachment provided was Plaintiff's declaration. (Dkt. # 177, Exh. 1, Declaration of Amanda M. Migchelbrink). Defendants move to strike Plaintiff's response because it was untimely filed and the service copy did not contain all attachments which are referred to in the response. (Dkt. 177, p. 2-3).

Plaintiff opposes the motion to strike, stating that he served the motion in a timely manner. Plaintiff admits that he served a copy of his response upon defense counsel without its numerous exhibits because it would have exceeded his weekly postage limit. (Dkt. # 181, Plaintiff's Declaration, p. 1). Plaintiff sent a letter to defense counsel on October 7, 2007, explaining the lack of exhibits in an attempt to "meet and confer," and stating that he would send the exhibits the following week. (Dkt. # 179).

1 The Court is at a loss as to why the parties did not confer and resolve this issue short of a motion
2 to strike. Conversely, Plaintiff is aware that the filing of the letter does not relieve him of the obligation
3 to properly and timely serve opposing counsel with the exhibits. In fact, Plaintiff indicates in his
4 Declaration that he fully intended to do so the next week. However, there is nothing in the record to
5 indicate that Plaintiff has served Defendants with copies of the exhibits referred to in his response.

6 Accordingly, it is **ORDERED** as follows:

- 7 (1) **On or before December 21, 2007**, Plaintiff shall provide the Court with proof that he
8 served Defendants with copies of the exhibits referred to in his response or, if Plaintiff has
9 not served Defendants with copies of the exhibits referred to in his response, he shall
10 provide the Court with an explanation of why he has not done so.
- 11 (2) The Clerk of the Court shall re-note Defendants' motion for summary judgment (Dkt. #
12 121) for the Court's calendar on **December 21, 2007**.

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14 DATED this 29th day of November, 2007.

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18 Karen L. Strombom
19 United States Magistrate Judge
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